

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRETT T LIVENGOD
Claimant

APPEAL NO. 20A-UI-09924-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRUDENTIAL INS CO OF AMERICA
Employer

OC: 04/19/20
Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a late appeal from the July 7, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was laid off on April 15, 2020 due to a lack of work. After due notice was issued, a hearing was held on October 2, 2020. Claimant Brett Livengood participated. Michele Wasikowski represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the July 7, 2020, reference 01, decision.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 7, 2020, Iowa Workforce Development mailed the July 7, 2020, reference 01, decision to the employer's last-known address of record. The employer's address of record is a United States Postal Service post box located in Saint Louis, Missouri and assigned to Equifax/Talx. The decision arrived at the address of record in a timely manner, prior to the deadline for appeal. The decision stated that an appeal from the decision must be postmarked by July 17, 2020 or be received by the Appeal Section by that date. Neither Equifax/Talx nor the employer filed an appeal from the decision by the July 17, 2020 appeal deadline. On August 14, 2020, Equifax/Talx faxed an appeal to the Appeals Bureau. The appeal letter is dated August 14, 2020. The Appeals Bureau received the appeal on August 14, 2020. Equifax/Talx acknowledged that the appeal was late and stated as follows:

Please accept this appeal as timely. Due to the unprecedented numbers of unemployment claims correspondence being received, the processing of this determination was delayed. This appeal was filed as soon as possible after the delay was resolved.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a

representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence in the record establishes an untimely appeal. The employer's sole witness lacked personal knowledge, or any knowledge, concerning the timeliness issue. The decision was mailed to the employer's address of record on July 7, 2020. The employer presented no evidence to establish that delivery of the decision to the Saint Louis address of record or receipt of the decision was delayed. The employer presented no evidence to establish that the employer and/or the employer's agent, Equifax/Talx, was deprived of a reasonable opportunity to file an appeal by the July 17, 2020 appeal deadline. Even if the evidence had established good cause for not filing the appeal by the July 17 2020 deadline, the evidence establishes unreasonable delay in filing the appeal. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The appeal was filed a full 28 days after the appeal deadline, well over a month after the decision was mailed to the address of record. The employer's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to error or misinformation on the part of Iowa Workforce Development and was not due to delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the July 7, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The employer's appeal was untimely. The July 7, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was laid off on April 15, 2020 due to a lack of work, remains in effect.



James E. Timberland
Administrative Law Judge

October 6, 2020
Decision Dated and Mailed

jet/sam